

## **REMARKS**

### ***I. Status of the claims***

Upon entry of the present amendment claims 17 and 19-23 will be pending in the present application. Claims 6-13 have been previously withdrawn from consideration. Claims 19 and 21 are the independent claims under consideration.

### ***II. Response to Rejection Under 35 USC § 103***

#### ***2. Rejection Under 35 USC § 103***

Claims 14-18 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Gardner, et al.* (U.S. Patent 6,107,129) in view of *Ju* (U.S. Patent 5,804,856). Claims 14-16 and 18 have been canceled. However, for at least the reasons set forth below

The establishment of a *prima facie* case of obviousness required that *all* of the elements be found in the prior art. As such, it follows that if a single element is not found in the prior art, a proper *prima facie* case of obviousness cannot be established. Moreover, obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is a teaching, suggestion or motivation to do so found in the references relied upon. However, hindsight is never an appropriate motivation for combining references and/or the requisite knowledge available to one having ordinary skill in the art. To this end, relying upon hindsight knowledge of applicants' disclosure when the prior art does not teach nor suggest such knowledge results in the use of the invention as a template for its own reconstruction. This is wholly improper in the determination of patentability.

Newly added claim 19 includes the limitation of:

*"...metallic silicide layers respectively formed on said source heavily doped regions and said drain heavily doped regions, and said metallic silicide layers are in contact with said sidewalls and said isolation regions, wherein undersides of said metallic silicide layers are substantially coplanar with respective undersides of said sidewalls in contact with said top surface."*

Claim 21 includes a similar limitation.

It is respectfully submitted that neither of the references to *Gardner, et al.* or *Ju* teach or suggest this limitation. Accordingly, because the applied references lack the teaching or suggestion of at least one of the claimed elements, and without passing on whether these references are properly combined, these references cannot serve to establish a *prima facie* case of obviousness. Therefore, claims 19 and 21 and the claims that depend therefrom are believed to be allowable over the applied art.

### **Conclusion**

Withdrawal of all objections and rejections is respectfully requested. For at least the reasons set forth above claims 17 and 19-23 are believed to be allowable over the applied art. Allowance thereof is earnestly solicited.

In the event that there are any outstanding matters remaining in the present application, the Examiner is invited to contact William S. Francos, Esq. (Reg. No. 38,456) at (610) 375-3513 to discuss these matters.

Except as otherwise stated in the previous Remarks, applicants note that each of the amendments have been made to place the claims in better form for U.S. practice or

to clarify the meaning of the claims; not to distinguish the claims from prior art references, otherwise narrow the scope or comply with other statutory requirements. Moreover, Applicants reserve all rights they may have under the Doctrine of Equivalents.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-0238 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted on behalf of:

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**Marked Version Showing Changes to Claim 17:**

17. (Once Amended) A MOS transistor as recited in claim [14]19, wherein an impurity concentration of said [first impurity region] lightly doped source region is nearly the same as that of said [second impurity regions] heavily doped source region, and an impurity concentration of said light doped drain region is nearly the same as that of said heavily doped drain region.